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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,206	02/09/2001	Michael Fritz	RDID0028US	5556

48801 7590 02/02/2006

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 SOUTH WACKER DRIVE
SUITE 3200
CHICAGO, IL 60606

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Communication Re: Appeal	Application No.	Applicant(s)	
	09/780,206	FRITZ ET AL.	
	Examiner	Art Unit	
	Suryaprabha Chunduru	1637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☒ The Notice of Appeal filed on 17 January 2006 is not acceptable because:

- (a) ☒ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on _____ was not timely filed.
- (d) ☐ the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
- (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. ☐ The appeal brief filed on _____ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
- (d) ☐ other: _____.

4. ☒ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☒ is before the examiner for consideration.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/780,206

2/9/2001

FRITZ

01-1096

EXAMINER

Surya Babha Chunduru

ART UNIT

PAPER

16 37

12

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

The reply filed on January 17, 2006 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): The amendment filed on January 17, 2006 is non-responsive because the response is incomplete as it lacks the arguments to the rejections under 35 USC 102, that is, Applicants did not address currently pending rejections in the office action.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

A notice of appeal is prematurely filed, and is thus defective when it is filed after a reply under 37 CFR 1.111 but before the Office issues another Office action in view of the reply. Applicant must wait to file any appeal until the examiner considers the reply and the claims are rejected again. Once the Office action mailed in response to the reply applicant may file another notice of appeal under 37 CFR 41.31. (Similarly, a notice of appeal is defective if it is filed on the same day as the reply under 37 CFR 1.111 or a request for continued examination (RCE) under 37 CFR 1.114.)


Since applicant has elected to request reconsideration of the rejection (or further examination) by filing a reply under 37 CFR 1.111 rather than only appealing from the second non-final rejection, the notice of appeal is premature for the following reasons:

- (1) The Office has not had the opportunity to consider the reply under 37 CFR 1.111 and issue an Office action in view of the reply (note that this is different than after-final situations where a reply under 37 CFR 1.116 is not entered as matter of right and applicant is appealing from the final rejection);
- (2) The status of the claims are uncertain as to whether the examiner would reject the claims again in view of the reply (e.g., the appeal would be unnecessary if the reply places the claims in condition for allowance);
- (3) The grounds of rejection are uncertain as to whether the examiner would apply the same grounds of rejection made in the second non-final rejection or make a new ground of rejection with or without using a new prior art reference;
- (4) It is unclear which "decision" by the examiner applicant is appealing from because the second non-final rejection may no longer be relevant in view of the reply under 37 CFR 1.111 and the examiner has not issued another decision in response to the reply under 37 CFR 1.111; and
- (5) A two-month time period for filing an appeal brief cannot be running against the applicant when applicant cannot determine whether the claims are under rejection again and which grounds of rejection would apply to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Surya Babha

Chunduru whose telephone number is 571-272-0783. The examiner can normally be reached on 8.30A.M. - 4.30P.M, Mon - Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Suryaprabha Chunduru
Patent Examiner
Art Unit 1637


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